

REMARKS

In response to the Office Action mailed on October 6, 2006, Applicants respectfully requests reconsideration. Claims 1, 4-7, 11-15, 19, 22-25, 29, 32-35 and 37-38 are pending in this Application. Claims 1, 11, 19 and 29 are independent claims and the remaining claims are dependent claims. A version of the claims is included hereinabove. Applicants believe that the claims as presented are in condition for allowance. A notice to this affect is respectfully requested.

The Examiner rejected claims 1, 4-7, 11-15, 19, 22-25, 29, 32-35 and 37-38 as being unpatentable over U.S. Patent No. 6,891,802 to Hubbard (hereinafter Hubbard), and U.S. Patent No. 6,137,782 to Sharon et al. (hereinafter Sharon) and further in view of U.S. Patent No. 6,684,387 to Acker et al. (hereinafter Acker).

First of all, applicants submit that the combination of Hubbard and Acker is improper. It is well established that in order to combine references there must be some "suggestion of desirability of the combination". In re Noznik, Tatter and Oberhauf, 18 USPQ 43 (CCPA 1973). Additionally the test of obviousness is not whether the prior art can be modified to produce the claimed invention, since under such a test all inventions would be obvious. Panduit Corp. v. Dennison Manufacturing Co., 810 F.2d 1561, 1574-75 (Fed. Cir. 1987). Further still, Hubbard and Acker are in different class/subclass designations. Hubbard is listed in class/subclass H04L 12/26 and Acker in class/subclass G06F 9/44. The Patent Office itself has designated the references in different class/subclasses, further indicating that the references are different and should not be combined. For all the reasons stated above, the combination of Hubbard and Acker is improper and the rejection should be removed.

Further, regarding claims 1 and 19, neither Hubbard, Acker nor Sharon disclose or suggest providing load to an object oriented software component usable to build an application. Hubbard describes testing of a network site, whereas Acker discloses "functional" testing of a software component (but not load testing). As described in the specification as filed on page 2 lines 18-25, load comprises providing a predetermined number of virtual users which perform a variety of functions or transactions with the target being tested. Thus, the load does not perform mere "functional" testing as

presented in Acker, but uses a number of virtual users to load test the target to determine the response of the target when multiple users are simultaneously accessing the target. Therefore since Hubbard and Acker should not be combined and further, if one were to theoretically combine the references, since Hubbard describes testing a web site while Acker describes functional testing of a software component, neither Hubbard nor Acker (nor Sharon), taken alone or in combination, disclose or suggest providing load to a software component usable to build an application. Therefore, claims 1 and 19 are believed allowable. Claims 4-7, 22-25, 37 and 38 depend from claims 1 or 19 and are believed allowable for at least the same reasons as claims 1 or 19. Accordingly, the rejection of claims 1, 4-7, 11, 22-25, 37 and 38 is believed to have been overcome.

Further still, regarding claims 11 and 29, neither Hubbard, Acker nor Sharon disclose or suggest performing distributed monitoring of an object oriented software component usable to build an application. Hubbard describes testing of a network site, whereas Acker discloses "functional" testing of a software component (but not load testing). As described in the specification as filed on page 4 lines 11-17, monitoring comprises provide testing of deployed targets in order to detect and report performance problems. Monitoring software may be e-Monitor® available from Empirix Inc. of Waltham, Massachusetts. The monitoring provided by the systems report failures in real time. The monitor software may provide a variety of notification options and corrective actions to allow the target owner to quickly resolve any problems. Thus, the monitoring does not perform mere "functional" testing as presented in Acker, but instead tests targets to detect and report performance issues as well as provide notification options and corrective actions. Therefore since Hubbard and Acker should not be combined and further, if one were to theoretically combine the references, since Hubbard describes testing a web site while Acker describes functional testing of a software component, neither Hubbard nor Acker (nor Sharon), taken alone or in combination, disclose or suggest providing monitoring to a software component usable to build an application. Therefore, claims 11 and 29 are believed allowable. Claims 12-

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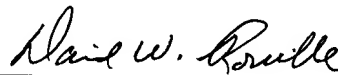
15 and 32-25 from claims 11 or 29 and are believed allowable for at least the same reasons as claims 1 or 19. Accordingly, the rejection of claims 1, 4-7, 11, 22-25, 37 and 38 is believed to have been overcome.

In view of the above, the Examiner's rejections are believed to have been overcome placing the pending claims in condition for allowance and reconsideration and allowance thereof is respectfully requested.

Applicants hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,



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